



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Libby Corporation  
File: B-228326  
Date: October 9, 1987

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### DIGEST

1. General Accounting Office will not consider protest that a solicitation has the wrong Standard Industrial Classification (SIC) code, used to determine the small business size standard for the procurement, since conclusive authority to determine the proper SIC code is vested in the Small Business Administration.
2. Protest that agency conducted an auction by disclosing protester's price position and then requesting best and final offers from a limited number of offerors is dismissed as untimely, since it was not filed within 10 working days after the protester learned the protest basis.

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### DECISION

Libby Corporation protests that request for proposals (RFP) No. F41608-86-R-4155, issued by the Department of the Air Force, used the incorrect Standard Industrial Classification (SIC) code to determine the applicable size standard for small businesses eligible to compete for the procurement. Libby also complains that before requesting a second round of best and final offers (BAFO's) necessitated by changes to the solicitation after the first round, the Air Force improperly disclosed to the other competitors that Libby had submitted the lowest-priced first round BAFO, and then limited the number of other offerors from whom second-round BAFO's were requested. Libby protests that the effect of these actions was to hold a prohibited auction targeted at Libby's low first-round price.

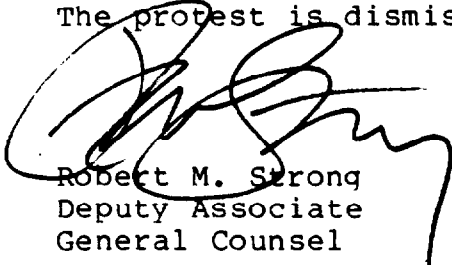
We will not consider Libby's protest that the Air Force used the incorrect SIC code. The initial determination of the appropriate SIC code is for the contracting officer, with affected firms having the right to appeal to the Small Business Administration, whose determination on such matters is conclusive. Consequently, our Office will not consider what SIC code should be included in a small business

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set-aside. Jands, Inc., et al., B-226983 et al., July 7, 1987, 66 Comp. Gen. \_\_\_\_\_, 87-2 C.P.D. ¶ 19.

We will not consider the other protest bases raised by Libby either. First, we do not see how the fact that the Air Force limited the number of offerors in the competitive range for purposes of the second round of BAFO's--presumably, to those firms that still had a reasonable chance at the award--competitively prejudiced Libby. We also note in this regard that Libby is not an interested party to protest on behalf of other firms that they were improperly excluded from the competitive range. See Westinghouse Electric Corp., B-224449, Oct. 27, 1986, 86-2 C.P.D. ¶ 479. In any event, under our Bid Protest Regulations, a protest based upon other than an impropriety apparent from the face of a solicitation must be filed within 10 working days after the protester knows or should have known the protest basis. 4 C.F.R. § 21.2(a)(2) (1987). We have been informed by the Air Force that the last round of BAFO's was requested on September 9, 1987. Since it is evident from Libby's protest that the firm knew of the Air Force actions about which Libby complains by the time the last round of BAFO's was requested, the protest that an auction effectively was conducted, filed with our Office on September 28, is untimely.

The protest is dismissed.



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